Supreme Court, U. S.
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No. 79-1485
IN THE

Supreme Court of the United States

October Term, 1979

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

LAURA DUNBAR, et al., MARY WOOD, et al.,
BERNICE JOHNSON, et al., and
THARON RAWSON, et al.
Respondents.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

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Petitioner, United Steelworkers of America, AFL-CIO-CLC ("USWA"), wishes simply to make clear, lest there be any doubt, that the respondents in this case have addressed the major thrust of their opposition to an issue which USWA has never raised. Thus, respondents argue throughout their opposition that the *jurisdiction* of the Idaho courts over the instant action is not preempted by federal law. See particularly Op. Cert. at 6-9, 14-15, 17-19. In this vein, the culmination of respondents' argument is that (Op. Cert. at 19):

> "Clearly, the N.L.R.B. could not give the relief requested and desperately needed by the Respondents herein. . . . It can scarcely be argued but that the State of Idaho has a keen interest in the protection of the

> widows and children of its miners, and that protection will scarcely be promoted by a ruling which would leave the widows and children without relief, except possibly the illusory hope that the N.L.R.B. might somehow find an unfair labor practice, some way reprimand the union, and possibly, remotely, hope for better practices in the future."

But USWA has never contended that the Idaho courts are ousted of jurisdiction over this action, or that the National Labor Relations Board has exclusive jurisdiction. Rather, USWA's argument goes to the *substantive standard* to be applied wherever the action may be brought: as set forth in the petition, it is USWA's position that a challenge to the manner in which a union administers or enforces a collective bargaining agreement must be governed by the federal duty of fair representation; and that federal duty preempts any state law negligence claim addressed to such union conduct.[1]

Respectfully submitted,

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[1] To the cases cited at n. 16 of our petition which reached a result contrary to that of the Idaho Supreme Court in this case, we add the following citation: *Neubauer, et al.* v. *Owens-Corning Fiberglass Corp., et al.*, Civ. Act. No. 77-C-52 *et seq.*, —— F. Supp. —— (E.D. Wisc., March 18, 1980).